



Traveling to Another Dimension in Employment Law – ADA, FMLA, GINA, and Workers Compensation and How to Decide?

For intro use this link.

<https://www.youtube.com/watch?v=6g7vz6c2fog>

Objectives

- Recognize the importance of ADA, FMLA, GINA and Workers' Compensation Laws.
- The purpose of these laws.
- Identify if the employer is subject to these laws.
- Recognize the requirements and how do these laws interplay.
- Apply your knowledge to analyze whether a situation is covered by one or more of these laws and how they interplay with each other when managing absenteeism.
- Provide facts resources for helping to make decisions.

Recognize the Importance of ADA, FMLA, and Workers' Compensation Laws.

It is important to recognize and analyze the interaction of these laws because:

- Most absences are related to employees or their family members illness. One, both, or all three of these laws may be involved.
- Violations of these laws may result in lost wages, back pay, reinstatement, retroactive benefits, compensatory damages, and punitive damages.
- Significant costs can be associated with an employer in workdays lost, temporary help costs and overtime pay.
- Employers have legal, moral and ethical responsibilities to assure that employees receive the benefits and protections these laws provide.

Purpose of ADA, FMLA, GINA and Workers' Compensation Laws

The ADA prohibits discrimination against employees job applicants who are “qualified individuals with a disability”.

The FMLA sets minimum leave standards for an employee's own or an immediate family member's serious health condition, for the birth or adoption of a child, and for military exigencies.

Purpose of ADA, FMLA, GINA and Workers' Compensation Laws

GINA prohibits use of genetic information in employment decision-making. It restricts acquisition of genetic information and requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information.

Workers' Compensation laws provide for payment of compensation and medical benefits for workplace injuries and minimize employer liability.

Identify if the Employer is Subject to ADA, FMLA, GINA and Workers' Compensation Laws.

Employer Coverage

- **ADA** – 15 or more employees for 20 weeks during current or preceding calendar year
- **FMLA** – 50 or more employees for at least 20 weeks during current or preceding calendar year
- **GINA** – 15 or more employees
- **Workers' Compensation** – Missouri - 5 or more employees, unless you are in the construction industry.

Requirements / Interplay

Enforcement Authorities

ADA – Equal Employment Opportunity Commission (EEOC)

FMLA – Department of Labor (DOL - Wage and Hour Division)

GINA – Equal Employment Opportunity Commission (EEOC)

Workers' Compensation Laws – Missouri Department of Labor

Requirements/ Interplay (cont'd)

These are the areas of interplay between the ADA, FMLA, and Workers' Compensation that employers need to consider when managing employee absenteeism.

NOTE: State laws may provide broader protections than federal requirements.

Employee Eligibility

- **ADA** – an employee (or applicant) who is disabled as defined by the ADA, is qualified for the position and can perform the essential functions of the position with or without a reasonable accommodation.
- **FMLA** – an employee who has worked at least 12 months and 1,250 hours prior to the start of the leave and who works at or reports to a worksite where there are 50 or more employees within a 75-mile radius.
- **Workers Compensation** – an employee who has an injury arising out of or in the course of employment with state law exceptions possible for willful misconduct or intentional self-inflicted injuries, willful disregard of safety rules, or intoxication from alcohol or illegal drugs.

Requirements / Interplay (cont'd)

Length of Leave

- **ADA** – No specific limit for the amount of leave that would be provided as a reasonable accommodation that does not create an undue hardship on the employer.
- **FMLA** – Provides for 12 weeks of unpaid leave in the 12 month period as defined by the employer and 26 weeks for military caregiver leave.
- **Workers' Compensation** – No specific limit for the amount of leave an injured worker may have.
- **TREND** – A large percent of FMLA cases, automatically become ADA cases when the employee has exhausted all possible leave and is still unable to return to work.

Requirements / Interplay (cont'd)

Medical Documentation

- **ADA** – Only medical examinations or inquiries regarding an employee's disability that are job-related and limited to determining ability to perform the job and whether an accommodation is needed and would be effective. Start "interactive process" with the employee to obtain relevant information to determine the feasibility of providing the leave as a reasonable accommodation without causing an undue hardship.
- **FMLA** – Medical certification of the need for the leave not to exceed what is requested in the Department of Labor (DOL) Medical Certification Form.
- **GINA** – Provide statements to medical providers that they do not provide any genetic information when responding to requests for medical information.
- **Workers' Compensation** – Medical information that pertains to the employee's on-the-job injury.

Requirements / Interplay (cont'd)

Restricted or Light Duty

- **ADA** – Required to be offered if it is a reasonable accommodation that does not create an undue hardship on the employer.
- **FMLA** – Cannot be required in lieu of FLMA Leave.
- **Workers' Compensation** – Should be offered if available as it may eliminate the employee's entitlement to the wage replacement benefit and reduce impact of claim.

Requirements / Interplay (cont'd)

Fitness-to-Return-to-Work Certification

- **ADA** – Permitted as long as the medical examination and inquiry is job-related and necessary to determine whether the employee can perform the essential functions of the job.
- **FMLA** – Can only be required under a policy or practice that requires employees who have been on a similar type of leave of absence.
- **Workers' Compensation** – May be and is typically required.

Requirements / Interplay (cont'd)

Benefits While on Leave

- **ADA** – No specific requirements but cannot discriminate and must provide same benefits as those provided to employees on non-ADA leave of absence.
- **FMLA** – Health coverage must be continued at same level as prior to the leave. Benefits other than health benefits are determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).
- **Workers' Compensation** – Not required to be continued unless run concurrently with FMLA leave.

Requirements / Interplay (cont'd)

Reinstatement

- **ADA** – Required reinstatement to previous job unless doing so would create an undue hardship on the employer. Reassignment can be an accommodation.
- **FMLA** – Required reinstatement to the same or an equivalent job. NO undue hardship exception.
- **Workers' Compensation** – No reinstatement rights under most state laws, except for retaliatory discharges.

Facts About ADA, FMLA, and Worker's Comp.

- Not all “disabilities” under ADA are “serious health conditions” under FMLA, and vice versa.

Example

Mild hernia – FMLA not ADA

Normal Pregnancy – FMLA not ADA

Pregnancy- with Related Impairments (such as anemia, gestational diabetes, etc.) – FMLA & ADA

- Most Workers' Compensation injuries are considered temporary in nature and are not covered under ADA or FMLA.

Facts About Discipline and Retaliation

Employee Issues – What do I do?

- Employee discipline is based on performance issues or other reasons not related to protected class by these laws.
- Look at each situation on a case by case basis to make sure this is not an accommodation that you are or should consider. If an employee violates your company policy, and the company is treating all other employees the same, you can still follow your companies policy and procedures when it comes to discipline.



Examples of ADA, FMLA, and Worker's Comp.

Resources – EEOC Publications

EEOC Government Website

See Home>About EEOC>Publications

Employer-Provided Leave and the Americans with Disabilities Act (May 9, 2016).

- EEOC position “Some employers may not know that they may have to modify policies that limit the amount of leave employees can take when an employee needs additional leave as a reasonable accommodation.”
- “Employees with disabilities must be provided with access to leave on the same basis as all other similarly-situated employees.”

Resources – EEOC Publications

EEOC Government Website

See Home>About EEOC>Publications

Facts Sheet: Genetic Information Nondiscrimination Act

See Home>Laws, Regulations & Guidance>Regulations

Background Information for EEOC Final Rule on Title II of the Genetic Information Nondiscrimination Act of 2008

Safe Harbor Language (GINA)

The Genetic Information Non-Discrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information.

An employer *must* tell its own health care providers not to collect genetic information as part of employment-related medical exams when it sends an applicant or employee for a medical examination.

Resources – JAN – Job Accommodation Network

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ASK JAN
If you have a question about workplace accommodations or the Americans with Disabilities Act (ADA) and related legislation, we can help.

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About JAN **Frequently Asked Questions** **Training**

ODEP A service of the Office of Disability Employment Policy, U.S. Department of Labor

What can YOU do? The Campaign for Disability Employment

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Lessons Learned

- Update your job descriptions.
- Look at each facility to see if you can reasonably accommodate an employee.
- Research, gather data, and analyze situation on the employee.
- Look at what protected classes the employee may be included.
- Look at how the company has treated other employees and make sure you are applying it consistently.
- If there is a concern about legal risks, share the information you have gathered with an attorney.

Summary

- **It is important to recognize and evaluate the interaction of the ADA, FMLA, and Workers' Compensation Laws because most absences are related to the illness of employees or their family members and one, both, or all three laws may be involved. Employers have legal responsibilities to comply with these laws and face significant violations for non-compliance. Employers have ethical and moral responsibilities to assure employees receive the benefits and protections these laws provide.**

Summary (cont'd)

- **The three laws have different purposes. The ADA prohibits discrimination against employees and job applicants who are “qualified individuals with a disability”. The FMLA sets minimum leave standards. Workers’ Compensation laws provide for payment of compensation and rehabilitation for workplace injuries and minimize employer liability.**
- **The ADA is enforced by the EEOC, FMLA by the DOL and Workers’ Compensation laws by state workers’ compensation commissions.**

Summary (cont'd)

Requirements / Interplay between the three laws are:

- **Employer Coverage**
- **Employee Eligibility**
- **Length of Leave**
- **Medical Documentation**
- **Restricted or Light Duty**
- **Fitness-to-Return-to-Work Certification**
- **Benefits While on Leave**
- **Reinstatement**



Questions?

Comments?

Course Evaluation

Please be sure to complete and leave the evaluation sheet you received with your handouts

Thank you for your attention and interest !

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